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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,815	09/12/2003	Harvey Theodore Young	48973/THD/K163	7049
23363	7590	07/05/2006	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			BIANCO, PATRICIA	
PO BOX 7068				
PASADENA, CA 91109-7068			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/660,815	Applicant(s) YOUNG, HARVEY THEODORE	
	Examiner Patricia M. Bianco	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 17, 26 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-25, 27, 28 and 30-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/4/04; 6/7/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Species H in the reply filed on 4/19/06 is acknowledged. Claims 1-16, 18-25, 27, & 30-36 are readable thereon

Claims 17, 26, 28, & 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/19/06.

### *Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology, namely disclosed. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **heat bar** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9, 16, 18-22, 24-25, 27, 28, 30, & 32-36 rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al. (6,974,447). Smith et al. (hereafter Smith) discloses a receptacle, that is a flexible bag, made of a flexible front sheet sealed to a flexible back sheet and having at least one port, which is a nozzle, molded to the bag at an attachment point seen to be an attachment flange. The attachment flange is part of the bag and therefore has a first and a second layer joined together. The attachment flange has a first opening and a second, larger opening and comprises a fin (120)(see figures 5-8). With respect to the limitation of claim 1 setting forth the contacting and heat sealing the layers using a heat bar, and claim 3 requiring a molding step, and claim 32-33 requiring a heat bar, these limitations are considered to be met by the manufacturing process disclosed by Smith.

With respect to claims 8 and 9, Smith also discloses that the bag may be made of a multi-layer film which inherently includes three layers (col. 10, lines 14-35).

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With respect to the claim limitations of claims 21, 22, 24, and 28 the port is shown to have a cap that may be covered by a membrane film or a releasably sealed septum.

With respect to claims 18 & 27, this seal is also seen as a drain seal and is punctual.

With respect to claim 30, the recitation that the port is "adapted to receive a spike" has not been considered sine it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. ('447) in view of Smith et al. (6,846,305). Smith '447 discloses the invention

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substantially as claimed, see rejection to claim 1 supra; however, Smith fails to disclose specifically that the bags distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, that a second layer is made from PEBA or EGM, and that a third layer is made from SEBS if the second is EGM or carboxy modified polypropylenes if the second is made from PEBA; Smith '447 also fails to disclose specifically that the port is made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, that the blend is in a weight-weight ratio of about 90:10 to about 70:30 of polypropylene-ethylene random copolymer and SEBS elastomer.

Smith '305 teaches of bag to be made of a port made from a blend of layers in the materials of distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer that is a blend is in a weight-weight ratio of about 80:20 of polypropylene-ethylene random copolymer and SEBS elastomer. This encompasses the claimed range. Smith '305 also teaches that the port being can be made of these same materials and ratios. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the multi-film layered bag of Smith '447 having either or both a bag and a port having layers in the materials of distinct film layers are a made from a blend of polypropylene-ethylene random copolymer and SEBS elastomer, since applicant has not set forth any criticality to the materials and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter



of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416.

With respect to the limitations that a second layer is made from PEBA or EGM, and that a third layer is made from SEBS if the second is EGM or carboxy modified polypropylenes if the second is made from PEBA if desired, since applicant has not set forth any criticality to these materials or the specified order as claimed. Also, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416.

Applicant is also reminded that arguments toward the criticality of an element will generally be given little patentable weight. The basis for criticality should be clearly disclosed in the specification or supplied by affidavit. See In re Cole, 140 USPQ 230 (CCPA 1964).

Claims 23 & 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith '447, as applied to the rejection of claim 1, in view of Domkowski et al. (6,280,431). Smith '447 discloses the invention substantially as claimed, see rejection to claim 1 supra; however, Smith fails to disclose specifically that the port has a FILM innerseal affixed to the port or that the attachment flange is a pyramid shape. Domkowski discloses a bag having a port wherein the port has a film diaphragm (col. 17, lines 16-30). At the time of the invention, it would have been obvious to choose a



foil to make the membrane since applicant has not set forth any criticality to the materials and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such modifications would be obvious. *In re Leshin*, 125 USPQ 416. Domkowski further shows that the attachment area, or flange, is in the shape of a pyramid (see figure 9). It would have been obvious to one having ordinary skill in the art to modify the shape of the attachment flange of Smith '447 to be a pyramid shape as a matter of design choice. Whether the pyramid shape solves any particular problem or produces any unexpected result, the pyramid shaped attachment characteristics is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. See In re Kuhle, 526 F.2d.553, 188 USPQ7 (CCPA 1975).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia M. Bianco whose telephone number is (571) 272-4940. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 25<sup>th</sup>, 2006

Patricia M Bianco  
Primary Examiner  
Art Unit 3761

  
**PATRICIA BIANCO**  
**PRIMARY EXAMINER**